

98-02675

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA

3 SECURITIES AND EXCHANGE
4 COMMISSION,

5 Plaintiff,

6 vs.

NO. 1-98-CV-0803-RWS

7 INTERNATIONAL HERITAGE, INC.,
8 STANLEY H. VAN ETSEN,
9 CLAUDE W. SAVAGE,
10 LARRY G. SMITH and
INTERNATIONAL HERITAGE,
INCORPORATED, a Nevada
corporation,

11 Defendants.

COPY

12 Raleigh, North Carolina
13 Monday, March 15, 1999

14 Videotaped deposition of ALAN S. HIRSCH, a
15 witness herein, called for examination by counsel for
16 the Defendant Stanley H. Van Etten, in the
17 above-entitled matter, the witness being duly sworn
18 by ROBIN J. SHAYS, a Notary Public in and for the
19 State of North Carolina, taken at the law offices of
20 Wood & Francis, PLLC, 434 Fayetteville Street Mall,
21 Raleigh, North Carolina, at 10:20 a.m. on Monday,
22 March 15, 1999, and the proceedings being taken down
23 by stenotype by ROBIN J. SHAYS, Registered
24 Professional Reporter, and transcribed by her
25 personally.

AMERICAN COURT REPORTING SERVICES, INC. (919) 932-9136

EXHIBIT

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19 ALSO PRESENT:

20

21 Stanley H. Van Etten
Larry Schadle, Videographer

22

23

24

25

C O N T E N T S		
1	WITNESS	EXAMINATION BY COUNSEL FOR
2	ALAN S. HIRSCH	PLAINTIFF DEFENDANT
3	By Mr. Wood	10, 139
4	By Mr. Hicks	133
5		
6		
7		* * * *
8	E X H I B I T S	
9	EXHIBIT NO.	PAGE
10	1 Consumer Protection web page dated 3/11/99, http://www.jus.state.nc.us/cpsmain/cpsmain.htm	44
11		
12	2 Letter dated 1/19/96 to Mr. Dan Bell from Kristine Lanning	62
13		
14	3 Letter dated 4/29/97 to Mr. F. Daniel Bell, III, from Kristine Lanning	74
15		
16	4 Document entitled "Timeline of North Carolina's Investigation Against International Heritage, Inc. and Statement by Attorney General Mike Easley" dated March 17, 1998	90
17		
18	5 Copy of newspaper article entitled "IHI to pay for probe" from The Charlotte Observer, June 5, 1997	105
19		
20	6 Document entitled "Minimum Required Features of Marketing Plan"	110
21		
22	7 Web page Memorandum to "Consumers With Outstanding Complaints Against IHI" dated August 10, 1998, http://www.jus.state.nc.us/cpsmain/inther2.htm	121
23		
24	8 Copy of Statute 14-291.2 "Pyramid and chain schemes prohibited" pages 895-896	127
25		

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: This is the videotape
3 deposition of Mr. Alan Hirsch taken by the
4 defendant in the matter of Securities and Exchange
5 Commission, plaintiff, versus International
6 Heritage, Incorporated, et al., defendants; Civil
7 Action No. 1-98-CV-0803-RWS.

8 This deposition is being held in the law
9 offices of Wood & Francis, 434 Hannover Square,
10 located in Raleigh, North Carolina. Today's date
11 is March 15, 1999. The time is 10:20 a.m.

12 The court reporter's name is Robin Shays
13 with the firm of American Court Reporting located
14 in Hillsborough, North Carolina.

15 The videographer is Larry Schadle with
16 the firm of Video Visions located in Cary, North
17 Carolina.

18 Would counsel now please introduce
19 themselves.

20 MR. WOOD: My name is Brent Wood and I
21 represent the defendant, Stanley Van Etten, in the
22 litigation that has already been referenced and has
23 been brought by the Securities and Exchange
24 Commission.

25 Consistent with our earlier statements in

1 previous discovery taken by the SEC, we take the
2 position that the bankruptcy stay operates as a
3 stay to this litigation. The Securities and
4 Exchange Commission disagrees, but we are
5 proceeding forward with discovery as the SEC has.

6 This is a deposition that we are -- we
7 have noticed of Mr. Alan Hirsch. We have
8 subpoenaed him and he has -- we've agreed upon this
9 date and he has appeared today with counsel.

10 MR. HICKS: My name is Bill Hicks. I
11 represent the Securities and Exchange Commission.

12 MR. STURGIS: And I'm K. D. Sturgis. I
13 represent the nonparty witness, Alan Hirsch.

14 THE VIDEOGRAPHER: Will the court
15 reporter please swear in the witness.

16 (Witness sworn.)

17 MR. STURGIS: Okay. Mr. Wood, a couple
18 of preliminary things, one, I wanted to just on the
19 record clear up.

20 You sent us a letter on March 10, 1999,
21 indicating that you rescheduled the deposition at
22 his request. It's our understanding that he did
23 not have a conflict on the earlier date, that some
24 others had some conflicts. And we just wanted to
25 clarify that we were prepared to go ahead at the

1 earlier time as well.

2 And at this point, I guess we need to
3 clarify issues of privilege. We expect you may ask
4 Mr. Hirsch some things that are privileged, and if
5 you do that, he will be inclined to give you as
6 much of an answer as he reasonably can, if it's
7 understood between the parties that to the extent
8 that he does testify about anything that's
9 privileged, that that does not constitute a waiver
10 beyond the extent of his testimony.

11 If that's something that you are
12 agreeable to, then I think we'll be able to give
13 you perhaps more information than you would
14 otherwise be getting.

15 MR. WOOD: What privileges are you
16 referring to?

17 MR. STURGIS: Attorney work product,
18 common interest privilege, also known as joint
19 prosecution privilege, and investigative privilege.

20 MR. WOOD: Is -- has the Attorney
21 General's Office been involved in some criminal
22 investigation?

23 MR. STURGIS: Are you asking, are we
24 conducting a criminal investigation?

25 MR. WOOD: Yes.

1 MR. STURGIS: That would be a matter that
2 is privileged.

3 MR. WOOD: Well, I want to know what drug
4 crimes are involved here. You mentioned a drug
5 prosecution privilege.

6 THE WITNESS: I said a joint prosecution
7 privilege which is different from --

8 MR. WOOD: Okay. I thought you said drug
9 prosecution.

10 MR. STURGIS: No. No. Are there any
11 things that we need to know about drugs?

12 MR. WOOD: No.

13 MR. STURGIS: Okay.

14 MR. WOOD: It's just that Mr. Hirsch has
15 told me a number of times that there's nothing
16 criminal that his office does, so -- that's what's
17 been stated in letters to me. So that's what I
18 want to understand, is if there's something
19 criminal involved in this, then I want to -- I want
20 to understand that so that I can understand these
21 privileges that are being asserted.

22 If you're asking for some consent from me
23 today, I can't give that. We have been operating
24 under the rules of civil procedure and we'll move
25 forward along those lines.

1 MR. STURGIS: Okay. That's fine.

2 MR. WOOD: So I can't consent to him --
3 he can -- I want him to give the responses. I am
4 not aware of any privileges that would apply in
5 this situation. I've looked at your objection and
6 we disagree with your objection. We think it's
7 inappropriate. We think either under North
8 Carolina law or under federal law, civil procedure
9 rules, Mr. Hirsch needs to answer fully in this
10 situation.

11 MR. STURGIS: Okay. Well, we're trying
12 to anticipate just what your questions are and this
13 all may be a moot discussion simply because your
14 questions may not go in the direction that I am
15 guessing they may. So we'll just deal with it as
16 it comes along.

17 But as I understand it, you are not
18 willing to agree that any response that he gives
19 that may encompass privileged matters is not a
20 waiver of any further privilege; is that correct?

21 MR. WOOD: That is correct. And we don't
22 believe any privileges apply. So we don't think
23 it's necessary for an issue like that to even be a
24 concern here today.

25 MR. STURGIS: All right. Well, fire

1 away. I appreciate the chance to --

2 MR. WOOD: I do want to understand for
3 the record who you represent.

4 MR. STURGIS: I'm with the Attorney
5 General's Office and you have subpoenaed Mr. Hirsch
6 as a deputy attorney general with the office.

7 MR. WOOD: I have subpoenaed Mr. Hirsch
8 individually. I am not deposing the North Carolina
9 Attorney General's Office. I'll reserve the right
10 to do that at a later time. But I am -- I have
11 subpoenaed Mr. Hirsch.

12 I served him at his office as a
13 convenience to him, because I thought that would be
14 the place that he most likely would prefer to
15 receive that rather than at his personal address.

16 MR. STURGIS: Right. And to the extent
17 that your deposition will cover things that concern
18 him in his official capacity, we treat it as Alan
19 Hirsch as deputy attorney general, and therefore, I
20 am here representing him in that official capacity.

21
22 Whereupon,

23 ALAN S. HIRSCH,

24 having been previously sworn,
25 was examined and testified as follows:

1 DIRECT EXAMINATION BY COUNSEL FOR DEFENDANT VAN ETTE

2 BY MR. WOOD:

3 Q Mr. Hirsch, obviously we know each other
4 and I'm going to be conducting your deposition
5 today, and I presume you know what a deposition is.

6 A I do.

7 Q If during the course of the deposition, I
8 ask you a question and you don't understand my
9 question, then please let me know. I would prefer
10 and I would assume you would prefer that the record
11 be clear so that --

12 A That's correct.

13 Q -- you know what I've asked and I know
14 what you've answered for any previous (sic) use of
15 this deposition.

16 This is a deposition in litigation, a
17 very serious litigation, that's been initiated by
18 the Securities and Exchange Commission against my
19 client, and so I will be having questions. If you
20 will respond verbally, then I would appreciate it.

21 For the record, could you please give me
22 your name?

23 A Yes, I'm Alan Hirsch.

24 Q The other thing I will tell you too, if
25 you need a break for your personal convenience, let

1 A You know, it was probably, again, 15 or
2 20 years ago, so I don't recall the details of the
3 case. But as I recall, a solicitor entered the --
4 the office of the Attorney General in the Justice
5 Building and handed out flyers for some sale. I
6 don't remember if it was a going-out-of-business
7 sale -- something which violated -- for some reason
8 violated one of the consumer protection laws. So I
9 was literally a witness because I was handed a
10 flyer.

11 Q You've been handed what's been marked as
12 Deposition Exhibit No. 2. Do you recognize this
13 document?

A Let me take a moment, please.

15 (Witness reviews document.)

16 A I don't think so, Brent. I mean, I can't
17 say with a certainty that I haven't seen it before.
18 Of course, you know, there are thousands of
19 documents -- probably dozens of documents I read
20 every day and this was -- this is dated
21 January '96, so it was three and -- three years and
22 some ago. And particularly because I've seen so
23 many International Heritage documents, I can't say
24 for certainty that I haven't seen it. But I don't
25 recall seeing it.

1 Q Do you know whether or not, after seeing
2 this document, your office received any information
3 from International Heritage either directly or
4 through Mr. Bell?

5 A I do not.

6 Q So this doesn't jog your memory as to
7 whether or not something was provided prior to
8 early '97 or --

9 A That's correct. And again, Brent, let me
10 say as I said before, simply because something came
11 to the office didn't mean that I would know about
12 it. I mean, we have, you know, 40-some people that
13 are -- that are working there.

14 Q And based upon this letter, it would
15 confirm with you that Ms. Lanning would be probably
16 the more appropriate person to ask these questions
17 relating to IHI, that is this letter and what
18 documentation was provided and things like that?

19 A Well, to the extent that those questions
20 have any relevance to the case that we're in, yes,
21 that's -- that's right.

22 Q But the North Carolina Attorney General's
23 Office isn't a party in this case.

24 A That's correct.

25 Q But members of the North Carolina

1 Attorney General's Office have been listed as --
2 as -- in the case as -- as witnesses.

3 A That I don't know. Certainly no one has
4 discussed with me the possibility of being a
5 witness in this case.

6 Q But Mr. Lawson did in fact testify in
7 Atlanta. You're aware of that, right?

8 A He did, yes.

9 Q And Ms. Lanning went down to Atlanta when
10 the SEC initiated its action and spent several days
11 there as well; is that correct?

12 A I believe that that's correct, yes.

13 Q Was Ms. Lanning supposed to be a witness
14 down in Atlanta?

15 A Not that I know of.

16 Q What was the purpose of Ms. Lanning going
17 down to Atlanta in March of 1998?

18 MR. STURGIS: Objection. Common interest
19 privilege. Mental impressions also about what was
20 a purpose or strategy in any particular action of
21 the office.

22 MR. WOOD: So you're instructing him not
23 to answer?

24 MR. STURGIS: That's correct.

25 BY MR. WOOD:

1 Q Has your office ever corresponded with
2 the Securities and Exchange Commission relating to
3 International Heritage?

4 MR. STURGIS: Same objection. Please
5 don't answer the question.

6 BY MR. WOOD:

7 Q Has your office ever corresponded with
8 regulators in the State of Georgia relating to
9 International Heritage?

10 MR. STURGIS: Same objection. Please
11 don't answer the question.

12 MR. WOOD: Would the same objection and
13 same instruction be applicable for each state or
14 federal regulatory agency that I would ask him
15 about?

16 MR. STURGIS: I don't know which ones you
17 would ask him about, but assuming that it would be
18 in regard to pyramid or similar statutes, I mean,
19 I -- if you ask --

20 MR. WOOD: I'll -- I'll limit it to
21 pyramid or securities or --

22 MR. STURGIS: Deceptive practices.

23 MR. WOOD: -- deceptive practices --

24 MR. STURGIS: Consumer protection kind of
25 matters?

1 MR. WOOD: Yes, that is correct.

2 MR. STURGIS: Yes, that -- yes, it would
3 be.

4 MR. WOOD: And would the same objection
5 and instruction apply with regard to written
6 communications as well as --

7 MR. STURGIS: Yes, it would.

8 MR. WOOD: Your -- and just to clarify
9 one more. That would also apply with regard to the
10 North Carolina Secretary of State, their securities
11 division?

12 MR. STURGIS: That is correct.

13 BY MR. WOOD:

14 Q Have any state or federal regulators
15 requested copies of any parts of your files that
16 are maintained relating to International Heritage?

17 MR. STURGIS: We're going to have to make
18 the same objection and request the witness not to
19 answer.

20 MR. WOOD: As to just whether they've
21 asked for them or not?

22 MR. STURGIS: Correct.

23 MR. WOOD: I want to again state for the
24 record that I'm going to reserve the right to seek
25 sanctions relating to -- to all of this.

1 MR. STURGIS: Well, you certainly have
2 whatever rights you have. But you know, I think
3 that would be unfortunate. But if you need to do
4 that, you know, that's for you to decide.

5 BY MR. WOOD:

6 Q Have members of the media requested any
7 of the files relating to International Heritage?

8 A Members of the media have requested
9 information. I don't know whether they've actually
10 requested the file -- you know, the specific files
11 or not. I know that fair bits of information have
12 been sent.

13 Q And have they put any of their requests
14 in writing?

15 A I don't know.

16 Q Who would know?

17 A Well, again, I think the -- you know,
18 Kristine would have -- would certainly be the next
19 person to ask. Whether she knows of her own
20 knowledge or would be able to point you to someone
21 else, I don't know. But I -- I would expect that
22 she would be -- she would know how all that worked.

23 Q Have you communicated with any members of
24 the media relating to International Heritage?

25 A I have.

1 Q Who have you spoken to, the media?
2 A Oh, gosh. Nobody recently. No, I take
3 that back. I've talk -- I've spoken to 60 Minutes
4 recently. But beyond the last few months, David
5 Ranii, a reporter at the Raleigh News & Observer; a
6 television reporter -- I think actually two
7 television reporters in the
8 Greensboro/Winston-Salem area. The name Scott
9 Brooks jumps out at me. There was one other
10 whose -- whose name I don't recall at the moment.
11 Adam someone. Stuart Watson, who is a reporter for
12 WRAL TV in Raleigh. I recall a reporter from the
13 Atlanta Constitution -- I don't recall his name --
14 probably at least a year ago, more than a year ago.
15 Maybe it was a her. I don't recall, but a reporter
16 from the Atlanta Constitution.

17 There was quite a bit of media interest.
18 I think there were probably more, but that's what I
19 remember at the moment.

20 Q Who have you spoken to with 60 Minutes?
21 A The main fellow's name was John Wells.
22 He brought with him an associate whose name I do
23 not remember. But they were together.

24 Q Has anyone with 60 Minutes requested any
25 documentation from your office?

1 A They have.

2 Q Has your office provided any
3 documentation to them?

4 A We have provided public records, yes.

5 Much of which, I believe, was material that was
6 submitted to us by International Heritage.

7 Q Have you provided to them any information
8 that you're objecting to producing today?

9 A I don't believe so.

10 Q Have -- has your office had to assert an
11 objection similar to the one that's being asserted
12 with regard to the subpoena that we have served and
13 as to any members of the media or any other entity?

14 A I'm sorry. I didn't follow the question.

15 Q Your office is asserting -- is asserting
16 an objection as to documents that we are requesting
17 and as to certain questions we are asking today.

18 A Yes, that's correct.

19 Q Has your office asserted that objection
20 relating to any material that has previously been
21 requested from other parties relating to
22 International Heritage?

23 MR. STURGIS: I have to object. The --
24 we have a subpoena here which is a formal process
25 and the way to deal with that if you have problems

1 is an objection.

2 If you would specify what you mean by an
3 objection or asserting an objection. I think it's
4 quite a different process when somebody calls you
5 up and -- and requests something.

6 BY MR. WOOD:

7 Q Do you understand the question?

8 A No.

9 Q Your -- the objections that you have
10 asserted are based on privileges.

11 A That's correct.

12 Q And what I want to know is, have you
13 asserted a similar objection based upon a similar
14 privilege as to requests that have been made by
15 other parties to produce documents that are within
16 your files?

17 A You mean in other cases or?

18 Q No, only as to International Heritage.

19 A To the best of my knowledge, this is the
20 only subpoena and the only deposition that we have
21 been asked to -- only subpoena that we've received
22 and only deposition that we've been asked to
23 attend. So certainly no formal objections would
24 have been raised.

25 If matters are -- are privileged, then we

1 would not give them out to others as well in the --
2 in the informal basis. But there's been no reason
3 to raise an objection because yours is the only
4 formal proceeding.

5 Does that answer your question?

6 Q You would agree, though, that if, let's
7 say 60 Minutes were to ask you for the same
8 documentation that I have asked you for --

9 A Yes?

10 Q -- that if your privilege is appropriate,
11 you would need to raise that same objectional
12 privilege and not produce the documentation to
13 them.

14 A Well, yeah --

15 MR. STURGIS: I'm going to object that it
16 calls for a legal conclusion, but you can go ahead
17 and answer the question.

18 THE WITNESS: I guess what I'm trying to
19 say, Brent -- I'm not trying to be -- to be
20 anything other than very straightforward, is that
21 the use of the words "privilege" and "objection"
22 are specific to the formal compulsory process. We
23 wouldn't have to raise a privilege or an objection
24 when someone else who does not have compulsory
25 process simply asks. We would simply decline to

1 provide those materials.

2 BY MR. WOOD:

3 Q Have you declined to provide any
4 materials to anyone other than me as counsel for
5 Mr. Van Etten or former counsel for International
6 Heritage?

7 A I do not believe. Now again, most --
8 most of this is not to my own knowledge, so I can't
9 be certain. But I do not believe that we have
10 provided any materials to anyone that we now claim
11 are privileged.

12 Q And have you declined to produce certain
13 materials to other --

14 A Well, nobody else has asked for
15 everything. So, rather than asking for everything
16 and then saying we decline to produce specifics,
17 generally speaking, people ask for specific
18 materials. And then we will either produce those
19 or not. But I don't believe -- you know, I don't
20 know, Brent. There's a lot of stuff in the file.
21 I doubt it.

22 (Exhibit 3 marked for
23 identification.)

24 BY MR. WOOD:

25 Q Mr. Hirsch, I'm handing you what's been

1 marked as Exhibit 3 for this deposition. And do
2 you recognize this document, save and except the
3 top part which is a fax indication or an a
4 indication that the document has been faxed by and
5 through several people, and also the handwritten
6 part that says, To Brent, from Angie, IH?

7 A Let me take a moment and -- and read it.

8 (Witness reviews document.)

9 A Yes, I recall this letter.

10 Q What is this letter?

11 A Well, it's a letter dated April 29, 1997
12 from Kristine Lanning to Dan Bell, which in summary
13 determines that the Attorney General's Office has
14 concluded that -- that the IH program was in
15 violation of North Carolina law and asking that an
16 agreement be entered setting out the method by
17 which IH would comply with the law.

18 That's my quick summar -- summary.

19 Q Do you know whether or not this was the
20 first notice that your office had given to
21 International Heritage that your office may have
22 considered them to be in violation of North
23 Carolina law?

24 A I don't know for certain. The tenor of
25 the letter suggests that it's probably the first

1 time that International Heritage was advised of the
2 ultimate conclusion, yes.

3 Q This letter is copied to Forrest Goldston
4 with the North Carolina Secretary of State's
5 office.

6 A That's correct.

7 Q Do you know why it would be copied to
8 him?

9 MR. STURGIS: Objection as to purpose or
10 strategy or their mental impressions. Please don't
11 answer the question.

12 BY MR. WOOD:

13 Q Would you have approved this letter
14 before it was sent out?

15 A I believe so.

16 Q But you don't recall doing that?

17 A I believe that I did. I mean, I do
18 recall, but again, a lot of things happen. I can't
19 be certain, but I believe so, yes.

20 Q In the last sentence of the second
21 paragraph, the letter says, We require legitimate
22 network marketing company -- or excuse me --
23 legitimate network marketing programs to make at
24 least 70 percent of sales to retail customers who
25 are not now and will not become participants in the